IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6710 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANDHI FIBERS

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 6710 of 2002
MR PR NANAVATI for Petitioner No. 1
MR DN PATEL for Respondent No. 1
SERVED BY RPAD - (N) for Respondent No. 2,4
..... for Respondent No. 3,5

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 21/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

Rule. Service of rule is waived by learned Senior Central Government Standing Counsel Shri D.N. Patel for the respondents. At the request of the learned advocates, the petition is finally heard today.

The petitioner is a proprietary concern which has been aggrieved by an order dated 11th July, 2002 passed by the Additional Commissioner of Customs, Nhawa Shewa, District Raigad. By virtue of the impugned order, the petitioner has been asked to execute a provisional bond to cover the full assessable value of the custom duty of the seized goods and the market value of the seized trucks. The provisional bond for release of the seized goods should also be supported by a bank guarantee for a sum of Rs. 10 lakhs, and the bond for release of six trucks valued at Rs. 2 lakhs each, should be supported by a bank guarantee for Rs. 3 lakhs.

The circumstances in which the impugned order had to be passed are as under:

The petitioner is a 100% Export Oriented Unit. It appeared to the respondent authorities that the goods worth Rs. 23,11,203/-, which were supposed to be exported by the petitioner, were likely to be disposed of by the petitioner in the local market. In the circumstances, the said goods were seized by the respondent authorities. It is the case of the petitioner that a sum of Rs. 30,92,908/- would be the amount of duty which the petitioner would have paid if the said goods had not been manufactured by an export oriented unit. The said amount, namely, Rs. 30,92,908/- has already been deposited by the petitioner with the respondent authorities on 6th April, 2002.

The petitioner wanted the said goods to be released. In the circumstances, the petitioner had addressed several letters to the respondent authorities for release of the said goods. Ultimately, by the impugned order dated 11th July, 2002, the petitioner has been directed to execute a provisional bond and give bank guarantee as stated hereinabove.

Learned advocate Shri P.R. Nanavaty appearing for the petitioner has submitted that the demand made by the respondent authorities under the impugned order is

unreasonable because the petitioner has already deposited a sum of Rs. 30,92,908/- on 6th April, 2002 towards the amount of duty. According to the learned advocate, the petitioner should not be asked to furnish bank guarantee so as to support the provisional bond, which the petitioner has to give. It has been therefore submitted by him that the petitioner should not be constrained to give bank guarantee so as to secure the bond which he is ready and willing to execute in favour of the respondent authorities.

Learned Senior Central Government Standing Counsel Shri D.N.Patel appearing for the respondent authorities has submitted that the petitioner is a proprietor of an Export Oriented Unit and therefore the petitioner was not supposed to dispose of the goods manufactured by him in the local market. According to him, the goods which have been seized were to be disposed of in the local market and, therefore, the goods have been seized in accordance with law. He has submitted that for the purpose of release of the goods, the petitioner must be asked to give bank guarantee because, if ultimately the petitioner is saddled with any penalty or any custom duty, and if the petitioner fails to make payment thereof, the amount payable by the petitioner can be recovered by having recourse to the bank guarantee.

We have heard the learned advocates and have noted the facts of the case. It is not in dispute that though there is no adjudication of the amount payable by way of duty on the goods seized by the respondent authorities, the petitioner has already deposited a sum of Rs. 30.92,908/- with the respondent authorities on 6th April, 2002. There was no obligation on the part of the petitioner to deposit the said amount because still the said amount has not been adjudicated. Looking to the fact that the petitioner has already deposited the said amount with the respondent authorities, in our opinion, it would be very harsh if the petitioner is asked to furnish bank guarantee in respect of the bond which he is asked to execute. Looking to the said fact, we direct that the petitioner should only execute provisional bond as directed under the impugned order without furnishing any bank guarantee. In our opinion, ends of justice would meet if the amount payable by the petitioner to the respondent authorities is secured by furnishing a provisional bond. In view of this order, the impugned order dated 11th July, 2002 stands modified accordingly.

Incidentally it has been submitted by learned advocate Shri P.R. Nanavaty that the petitioner desires

to export the goods, which have already been seized. Only on account of some misunderstanding, the respondent authorities came to the conclusion that the said goods were to be disposed of in the local market. It has been submitted by learned advocate Shri P.R. Nanavaty that the petitioner in fact desires to export the said goods and the petitioner would submit an application to the concerned authority so as to ensure that the goods which have already been seized are in fact permitted to be exported. The petitioner would not mind if the process of export of the said goods is carried out under supervision of an officer of the respondent authorities. If such an application is given to the Deputy Commissioner of Customs, Surat, the said Officer shall look into the application and do the needful so that, if the petitioner really desires to export the goods, the goods can be exported under strict supervision of the respondent authorities.

The petition stands disposed of as allowed. Rule is made absolute to the above extent with no order as to costs. Direct service is permitted.

(A.R. DAVE,J.)

(D.A. MEHTA,J.)

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